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An Introduction to the Minnesota Constitution

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AN INTRODUCTION TO THE MINNESOTA CONSTITUTION

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I. INTRODUCTION

Minnesota has *three* state constitutions. This may be unique in the constitutional history of the United States. The state has one of the shortest and most modern state fundamental laws, a revised text of which was adopted in 1974.[1] That constitution is, however, only an amendment and simplification of the previous constitution, adopted by the people in 1857, which became the basic law of the state when Minnesota was admitted to the Union in 1858. But the 1857 constitution itself had two separate authentic texts—somewhat different in detail—that originated in separate constitutional conventions. Since the 1974 constitution is simply a restatement of their text(s), Minnesota has the luxury of three fundamental laws.

The use of state constitutions is experiencing a comeback, and the Minnesota Constitution is no exception. The brief introduction to the Minnesota Constitution contained in part II explores why Minnesota courts increasingly look homeward first to resolve constitutional challenges. Part III then summarizes the his-

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1. 1974 MINN. LAWS ch. 409.

tory of Minnesota's constitution and takes the reader on a "short tour" of the document. Part IV recommends a procedural approach for an invocation of state constitutional law. Part IV goes on to compare differences in language between the federal and Minnesota Constitutions as grounds for an independent state analysis. The section concludes by pointing out other sources of individual rights protection in the Minnesota Constitution.

II. Background in the Application of State Constitutions

Across the nation, state constitutional law has recently reemerged as an important limitation on governmental authority. In the first half of the nineteenth century, state constitutions were virtually the only bulwark of the citizen against overreaching by state and local officials. Until the adoption of the Fourteenth Amendment in 1868, the Federal Bill of Rights was held to apply only against the federal government and not against state and local authorities.[2] Even after the adoption of that important provision, and well into this century, federal protections were largely secondary to state constitutional limitations.[3]

The increase in protections for civil liberties provided through federal constitutional doctrines and the federal courts eventually drove state doctrines into the background.[4] With the activism of

2. Barron v. Baltimore, 32 U.S. (7 Pet.) 242, 247 (1833). Federal protection, however, did extend to claims based on the main text of the constitution. *See, e.g.*, Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1 (1824) (applying the Commerce Clause, U.S. Const. art. I, § 8); Trustees of Dartmouth College v. Woodward, 17 U.S. (4 Wheat.) 518 (1819) (applying the Contracts Clause, U.S. Const. art I, § 10).

3. "Only rarely in the 19th century did individuals challenge the exercise of federal authority." William J. Brennan, Jr., *The Bill of Rights: State Constitutions as Guardians of Individual Rights*, N.Y. St. B.J., May 1987, at 16 [hereinafter Brennan, *The Bill of Rights*]. From the adoption of the Fourteenth Amendment in 1868 until 1897, the Supreme Court consistently held that specific provisions of the Bill of Rights were not applicable to the states. William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 Harv. L. Rev. 489, 493 (1977) [hereinafter Brennan, *State Constitutions*]. Even then, application of the Bill of Rights' restraints to state action "was slow in coming." *Id.* For example, from the time the Minnesota Constitution was adopted in 1857 until First Amendment free speech guarantees were held to apply to the states in Gitlow v. New York, 268 U.S. 652, 666 (1925), "the Minnesota Constitution was the *only* source of protection for its citizens against state infringement of free speech and free exercise of religion." Terrence J. Fleming & Jack Nordby, *The Minnesota Bill of Rights: "Wrapt in the Old Miasmal Mist"*, 7 Hamline L. Rev. 51, 56-57 (1984).

4. *See* Melissa Sheridan & Bradford S. Delapena, *Individual Liberties Claims: Promoting a Healthy Constitution for Minnesota*, 19 Wm. Mitchell L. Rev. 683, 689-90 (1993). "Since the minimum protections provided by federal law were more generous than even the most expansive state protections, lawyers did not bother to raise state constitutional claims. As a result, the use of state constitutions atrophied." *Id.*

the Warren Court in protecting the rights of minorities and the accused, federal doctrines acquired even greater significance.[5] Procedural advantages available in federal courts enhanced the popularity of bringing claims under the federal guarantees even more. By applying federal constitutional law, state courts frequently found it unnecessary to reach state constitutional issues.[6] When reliance on state constitutions was necessary, state courts often interpreted them in a manner that paralleled the federal doctrines.[7] As a result of these factors, state constitutions lapsed into dormancy.[8]

Minnesota courts historically have been progressive—and often aggressive—in protecting individual rights through application of state constitutional doctrines. For example, long before a federal right to counsel was extended to misdemeanor defendants who faced possible imprisonment, Minnesota courts established a similar rule under the Minnesota Constitution.[9] Yet the expansion of federal doctrines, especially during the period of the Warren Court, stunted the evolution of state constitutional law in Minnesota as it did elsewhere.[10] Claimants who

5. In the years from 1962 to 1969, many Federal Bill of Rights protections were extended to the states. *See* Brennan, *State Constitutions*, *supra* note 3, at 493. These included: 1) the prohibition against cruel and unusual punishments; 2) the right to counsel; 3) the privilege against self-incrimination; 4) the right to confront witnesses; 5) the right to a speedy and public trial; 6) the right to a jury; 7) the right to subpoena witnesses; and 8) the right to be free from double jeopardy. *Id.* at 493-94 (citing United States Supreme Court decisions that extended these provisions to the states through the Fourteenth Amendment).

6. *See* Sheridan & Delapena, *supra* note 4, at 689 ("[L]awyers, who sought to vindicate a criminal defendant's rights, ignored state law claims, recognizing that such vindication would more likely be achieved under federal law.").

7. *See, e.g.*, Nelson v. Peterson, 313 N.W.2d 580, 583 (Minn. 1981) (holding that the Minnesota and federal equal protection doctrines are the same); O'Connor v. Johnson, 287 N.W.2d 400, 405 (Minn. 1979) (holding that state and federal safeguards against unreasonable searches and seizures are the same).

8. *See* Sheridan & Delapena, *supra* note 4, at 689-90; Brennan, *State Constitutions*, *supra* note 3, at 495. In light of the increasing reliance on state constitutions, one scholar suggests using them in a principled way, rather than ad hoc, to expand rights construed narrowly by the United States Supreme Court. *See* Ronald K. L. Collins, *Reliance on State Constitutions—Away From A Reactionary Approach*, 9 HASTINGS CONST. L.Q. 1, 2 (1981).

9. *Compare* State v. Borst, 278 Minn. 388, 397, 154 N.W.2d 888, 894 (1967) (extending the right to counsel to indigents charged with misdemeanors that could lead to incarceration) *with* Argersinger v. Hamlin, 407 U.S. 25, 37 (1972) (holding that the Sixth Amendment requires that "no person may be *imprisoned* for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial") (emphasis added).

10. *See* Sheridan & Delapena, *supra* note 4, at 688-90.

could find strong support in federal law did not need to turn to the state's fundamental instrument.[11] Law schools stopped teaching state constitutional doctrines, thus producing a generation of lawyers who were virtually unaware of this added constitutional protection.[12]

In the 1980s, all of this began to alter. Changes in the composition and approach of the United States Supreme Court limited the protection that claimants had come to expect under various federal constitutional doctrines, ranging from equal protection to criminal procedure.[13] At the same time, or, more likely, as a response to these federal limits, many state high courts have returned to their state's fundamental instrument as a source of additional protection for individual rights.[14] The Minnesota Supreme Court is no exception.

Concurrent with a more restrictive view of the individual rights protected by the Constitution, the United States Supreme Court has also reemphasized the principles of federalism.[15] Freedom of state action brings with it the power to enforce state constitutional protections more stringently than those protections now available under the federal instrument. The Court has explicitly recognized the right of states to limit the authority of their own state and local authorities more restrictively than federal doctrines require.[16] The Minnesota Supreme Court has ag-

11. *Id.*

12. *See* Fleming & Nordby, *supra* note 3, at 54.

13. *See* Brennan, *The Bill of Rights*, *supra* note 3, at 17-18; *see also* Sheridan & Delapena, *supra* note 4, at 690; *see also* Ann Iijima, *Minnesota Equal Protection in the Third Millennium: "Old Formulations" or "New Articulations"?*, 20 WM. MITCHELL L. REV. 337 (1994); Jack Tunheim, *Criminal Justice: Expanded Protections Under the Minnesota Constitution*, 20 WM. MITCHELL L. REV. 465 (1994).

14. This renewed interest in state constitutions has led some law journals to devote special issues to state constitutional analysis. *See, e.g.*, 23 RUTGERS L.J. 723-1094 (1992) (Rutgers Law Journal's fourth annual issue on state constitutional law); 8 TOURO L. REV. 1 (Touro Law Review's first annual issue on New York State constitutional law); 20 WM. MITCHELL L. REV. 227-588 (1994) (William Mitchell Law Review's first special issue on Minnesota State Constitutional Law).

15. This has been evident, for example, in the presumption against preemption of regulatory areas by federal legislation. *See, e.g.*, Joseph T. McLaughlin and Kimberly A. O'Toole, *Federal Preemption*, A.L.I. 639 (1993) (discussing federal decisions that allow state tort law claims despite federal regulation of certain areas, including cigarette labeling, pesticide regulation, and nuclear safety); *see also* Hans A. Linde, *Does the "New Federalism" Have a Future?*, 4 EMERGING ISSUES ST. CONST. L. 251 (1991); David A Schlueter, *Federalism and Supreme Court Review of Expansive State Court Decisions: A Response to Unfortunate Impressions*, 11 HASTINGS CONST. L.Q. 523 (1984).

16. *See* Michigan v. Long, 463 U.S. 1032 (1983). *Long* was remanded to the Michigan Supreme Court to determine whether a police search of the defendant's car trunk

gressively taken advantage of this authority in the past and may be in a position to act even more broadly in the future.

One of the most striking and well-known Minnesota cases is *State v. Hershberger*,[17] which involved the constitutionality of a state statute requiring that operators of horse-drawn buggies and other slow moving vehicles display the common orange Slow-Moving-Vehicle warning triangle on the rear of their vehicles.[18] Amish farmers in southern Minnesota found this symbol offensive to their religious beliefs and refused to display the warning devices. The *Hershberger* defendants were cited for failure to display the warning devices. The appeal was brought under both the Free Exercise Clause of the First Amendment and the corresponding provisions of the Minnesota Constitution. However, the Minnesota Supreme Court found it unnecessary to consider the state constitutional issues in its original review of the case.[19] Instead, the court struck down the requirement as a violation of Amish citizens' First Amendment free exercise rights, relying on the Federal Constitution and then-recognized federal precedents.[20]

The State appealed this decision to the United States Supreme Court.[21] While *Minnesota v. Hershberger*[22] was pending before it, the Court decided another case, *Employment Division v. Smith*,[23] that narrowed the precedents on which the Minnesota court had relied. The United States Supreme Court then vacated and remanded *Hershberger* for reconsideration in light of its newly issued decision in *Smith*.[24] A straightforward application of *Smith* would have required reversal of the Minnesota decision.

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was permissible under the Federal Constitution. In a footnote, the Court stated that the Michigan court was "free to determine the validity of that search under state law." *Id.* at 1053 n.17. *See also* Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 461 n.6 (1981) ("A state court may, of course, apply a more stringent standard of review as a matter of state law under the State's equivalent to the Equal Protection or Due Process Clauses.").

17. 444 N.W.2d 282 (Minn. 1989) [hereinafter *Hershberger I*], *vacated sub nom.* Minnesota v. Hershberger, 495 U.S. 901 (1990), *on remand*, State v. Hershberger, 462 N.W.2d 393 (Minn. 1990) [hereinafter *Hershberger II*].

18. *Hershberger I*, 444 N.W.2d at 284.

19. *Id.* at 289-90.

20. *Id.*

21. Minnesota v. Hershberger, 495 U.S. 901 (1990).

22. *Id.*

23. 494 U.S. 872 (1990).

24. *Hershberger*, 495 U.S. at 901.

On remand, the Minnesota Supreme Court examined the question for the first time under the Minnesota Constitution.[25] The court found that the traffic code's requirement of a triangle violated the state constitution's own free exercise standards,[26] even though it probably no longer violated the federal norms.[27] The court's new interpretation of the free exercise clause of the Minnesota Constitution generally paralleled the *old* interpretation of the federal standard.[28] Moreover, the Minnesota court did not need to reach or reconsider the federal question. By relying exclusively on an independent state ground in its analysis, the court foreclosed further federal review of the case.[29] The Minnesota Supreme Court's recognition of the state constitutional doctrine established a tougher standard for review of the validity of state legislation under the Minnesota Constitution.[30]

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25. *Hershberger II*, 462 N.W.2d at 397.

26. *See* MINN. CONST. art. I, § 16. That section provides:

> The enumeration of rights in this constitution shall not deny or impair others retained by and inherent in the people. The right of every man to worship God according to the dictates of his own conscience shall never be infringed; nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any religious or ecclesiastical ministry, against his consent; nor shall any control of or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishment or mode of worship; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state, nor shall any money be drawn from the treasury for the benefit of any religious societies or religious or theological seminaries.

Id.

27. *Hershberger II*, 462 N.W.2d at 399. The Minnesota court held that the state failed to demonstrate that its interest in public safety could not by achieved through reasonable alternative means that would not infringe on the Amish community's freedom of conscience rights guaranteed by the Minnesota Constitution. *Id.* The court declined to reconsider the case under the federal standard. *Id.* at 395-96. If anything, the court hinted that it could affirm *Hershberger I* based on associational freedoms also infringed by the statute. *Id.*

28. The Federal Free Exercise Clause provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. CONST. amend. I. *Compare id. with* MINN. CONST. art. I, § 16, *supra* note 26. The difference in language between the Minnesota Bill of Rights and its federal counterpart appears to afford Minnesota citizens greater protection than the corresponding federal provisions. *See* Fleming & Nordby, *supra* note 3, at 68-69. Furthermore, the difference in text "serves to lessen the force of United States Supreme Court decisions which only refer to the more limited protection afforded by the Federal Bill of Rights." *Id.* at 68.

29. *Hershberger II*, 462 N.W.2d at 396-97.

30. *Id.* at 397. The *Hershberger II* court observed that the language of the Minnesota Constitution:

> [I]s of a distinctively stronger character than the federal counterpart . . . . Whereas the first amendment establishes a limit on government action at the point of *prohibiting* the exercise of religion, section 16 precludes even an *in-*

The Minnesota Supreme Court has declared its independence from parallel interpretations of similar federal constitutional provisions on a number of subsequent occasions. Several are the subjects of articles in this symposium issue.[31] Still other possibilities continue to present themselves.

In order to invoke more extensive state constitutional protection than the base-level protections provided under the Federal Constitution, the so-called "adequate and independent state ground" doctrine must necessarily be satisfied.[32] Primarily, this means that pleadings and briefs must be drafted to *separately identify* the state constitutional doctrine invoked and to request a separate ruling.[33] In order to ensure that the state decision will be conclusive, courts must also rely on the state doctrine as a separate claim and explicitly indicate its distinctness from the

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fringement on or an *interference* with religious freedom. Accordingly, government actions that may not constitute an outright prohibition on religious practices (thus not violating the first amendment) could nonetheless infringe on or interfere with those practices, violating the Minnesota Constitution. Commentators have noted 'the state Bill of Rights expressly grants affirmative rights in the area[ ] of . . . religious worship while the corresponding federal provision simply attempts to restrain governmental action.'

Id. (citing Fleming & Nordby, *supra* note 3, at 67). *See also supra* note 26 (comparing the language of the state and federal bills of rights). The court concluded that "Minnesotans are afforded greater protection for religious liberties against governmental action under the state constitution than under the first amendment of the federal constitution." *Id.*

31. *See* Iijima, *supra* note 13 (equal protection); Floyd B. Olson, *The Enigma of Regulatory Takings*, 20 WM. MITCHELL L. REV. 433 (1994) (regulatory takings); Michael K. Steenson, *Fundamental Rights in the "Gray" Area: The Right to Privacy Under the Minnesota Constitution*, 20 WM. MITCHELL L. REV. 383 (1994) (privacy rights).

32. The doctrine was originally articulated by the United States Supreme Court in Minnesota v. National Tea Co., 309 U.S. 551, 555-57 (1940) (remanding "so that the federal question might be dissected out or the state and federal questions clearly separated" because there was "considerable uncertainty" as to whether the state court based its decision on state or federal grounds). *See also* Michigan v. Long, 463 U.S. 1032 (1983) (articulating the current, more limited, formulation).

In *Long*, the Court reasoned:

> [W]hen, as in this case, a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so. . . . If the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds, we, of course, will not undertake to review the decision.

Id. at 1040-41.

33. *See* Sheridan & Delapena, *supra* note 4, at 710; *see also* Fleming & Nordby, *supra* note 3, at 55-56 (discussing the Supreme Court's refusal to disturb decisions based on adequate and independent state grounds) (citing South Dakota v. Neville, 459 U.S. 553, 556 n.5 (1983); Herb v. Pitcairn, 324 U.S. 117, 125-26 (1945)).

federal claim.[34] The Minnesota Supreme Court has adopted what amounts to a standard litany for invocation of this doctrine.[35]

The starting point for arguing and analyzing constitutional claims on independent state grounds is the state's fundamental law as provided in its state constitution. The next section examines the origin and history of the Minnesota Constitution and explores some of the document's unique characteristics.

III. The Minnesota Constitution

The present text of the Minnesota Constitution dates from 1974,[36] when the voters adopted a comprehensive constitutional amendment, called the Structure and Form Amendment, which heavily edited the language of the old 1858 constitution. Technically, this is not a "new" constitution, but simply the product of editing and restatement of the "old" fundamental law. Approximately one-third of the verbiage of the old constitution was eliminated and the remainder was reorganized into a more orderly and easily understandable text. The elaborate legal language of the nineteenth century was also replaced with the more pithy syntax of the twentieth century in the "new" constitution.

A "short tour" of the Minnesota Constitution will provide a framework for identifying important constitutional principles. Like most state constitutions, the Minnesota document does not

34. *See* Sheridan & Delapena, *supra* note 4, at 708-10.

35. *See, e.g.*, State v. Gray, 413 N.W.2d 107, 111 (1987). In *Gray* the court stated:

> It is axiomatic that a state supreme court may interpret its own state constitution to offer greater protection of individual rights than does the federal constitution. Indeed, as the highest court of this state, we are "independently responsible for safeguarding the rights of [our] citizens." State courts are, and should be, the first line of defense for individual liberties within the federalist system. This, of course, does not mean that we will or should cavalierly construe our constitution more expansively than the United States Supreme Court has construed the federal constitution.

Id. at 111 (citing State v. Fuller, 374 N.W.2d 722, 726 (Minn. 1985) (citations omitted).

The Minnesota Supreme Court continues to reject parallels to federal constitutional standards relying on independent state grounds. *See, e.g.*, State v. Russell, 477 N.W.2d 886, 888 (1991) (applying a stricter rational basis test than used under the federal constitution, the court held that the statutory distinction between crack cocaine and powdered cocaine violated the state constitution's equal protection guarantee); *Hershberger II*, 462 N.W.2d at 397 (holding that the state constitution's freedom of conscience rights were broader than those under the Federal Free Exercise Clause). For a thorough discussion of expanded equal protection rights under the Minnesota Constitution, see *Iijima*, *supra* note 13, at 337.

36. A table of contents can be found at Appendix One.

follow the format of the United States Constitution. For example, the bill of rights is in the front, not the back;[37] amendments are directly incorporated into the text, not added on at the end; and the articles are organized along somewhat different principles.

Some history will aid in understanding and interpreting the Minnesota Constitution. The following section briefly details the political and social backdrop underlying the drafting and evolution of the Minnesota Constitution.

A. *History of the Constitution*

The Minnesota Constitution was born in the legal and political turmoil that preceded the Civil War in what was then a frontier area. When the Minnesota Territory was seeking statehood, a convention was assembled in 1857 to propose a constitution for submission to the people.[38]

A number of issues divided the Republican and Democrat parties. Because the Minnesota Territory was too large to be made into one state, Congress had to decide how to divide the territory.[39] Another point of contention was the issue of suffrage, with the Republicans advocating the right to vote regardless of race or color.[40] One of the major issues, however, was which party would "be able to claim that Minnesota belonged in its camp, and to be in a position to command the votes of Minnesota's delegation to Congress. The campaign [of 1857 for dele-

37. *Id.*

38. 11 Stat. 166 (1857).

39. At the time, the states most recently admitted to the union were Iowa and Wisconsin. Both of these states are smaller in area than Minnesota ultimately became. Much of the territorial dispute was attributable to national politics. Northern politicians in Congress wanted more allies to counter the politicians from the south during this era of political turmoil over slavery issues. *See* WILLIAM ANDERSON, A HISTORY OF THE CONSTITUTION OF MINNESOTA 62 (1921). Anderson provides a comprehensive history of Minnesota through 1920, from which much of this discussion is derived.

The Minnesota Democrats were largely from the "northern" cities of Saint Paul, Saint Anthony and Stillwater. *Id.* at 45. The Republican minority was from the southern region of Minnesota. *Id.* The Republicans, jealous of the Democrat's superior power, wanted to weaken this power by dividing the state with an east/west boundary just north of Saint Paul. *Id.* at 47. Because under this arrangement the northern cities would no longer be centrally located, the capital of the new state would have to be moved southward, resulting in a shift of political power. The Democrats successfully resisted such a division of the state. *Id.* at 49.

40. 1 WILLIAM WATTS FOLWELL, A HISTORY OF MINNESOTA 412-13 (1956).

gates to the constitutional convention] was nearly devoid of all ideas save that of carrying Minnesota for the party."[41]

The convention was so sharply divided that it was not able to settle election disputes or elect officers.[42] Unable to resolve dissention, two groups of delegates[43] representing Democrats and Republicans retired to separate locations in Saint Paul and drafted separate constitutions.[44] After each had prepared a draft, the leaders realized the futility of continued partisan separation.[45] Consequently, a "conference committee" of representatives of both groups met to draft a common proposal.[46] Handwritten drafts were then prepared, which were returned to the two separate "conventions."[47] They separately adopted and signed the drafts and adjourned.[48]

Since the convention took place in the days before photocopying, there were numerous discrepancies between the two drafts, most of which were minor.[49] The Secretary of the Territory, who conducted the election on the proposed constitution, managed to avoid designating which of the constitutions was being adopted. He merely put to the people the question of whether the constitution proposed by the convention in Saint Paul should be adopted, without clearly designating which of the two documents was under consideration. The people overwhelmingly approved.[50] Following federal congressional action, in

41. *See* ANDERSON, *supra* note 39, at 72.

42. *See* ANDERSON, *supra* note 39, at 75-86.

43. Fifty-nine delegates were Republicans, one of which did not have official credentials. Fifty-six delegates were Democrats, six of which did not have official credentials. Thus, the two groups of delegates numbered more than the authorized membership of the convention. *Id.* at 75.

44. *Id.* at 88-92.

45. *Id.* at 97.

46. *Id.* at 98. This might be described as a kind of partisan bicameralism, in which each party had unanimous control of one "house" of the convention.

47. ANDERSON, *supra* note 39, at 109. The Democratic and Republican handwritten constitutions are reproduced in volume 1 of MINN. STAT. ANN. 161 (1994).

48. ANDERSON, *supra* note 39, at 109.

49. *Id.* at 110. Some examples include using a comma instead of a semicolon or substituting the word "judge" for "justice." The two constitutions "differ[ed] from each other in 300 minor respects." *Id. See also id.* at 270-75 (detailing each variance between the two documents).

50. *Id.* at 133.

1858 Minnesota became a state, albeit one with a slightly astigmatic constitution.[51]

No legal disputes arose over the differences in the two versions of the constitution.[52] Citizens may have been unaware of any differences, since the public printer issued a single version that was long used by the courts.[53] Indeed, the printer introduced some variations of his own into what is now article 13, section 4, of the constitution by slightly changing its words. The constitution originally required companies that exercised eminent domain powers to "carry the mineral, agricultural and other *productions or manufactures* on equal and reasonable terms."[54] The *underscored* words were changed in the printing of 1883 to read "productions of manufactures," an obviously meaningless phrase.[55] Without any legislative authorization, the public printer then made sense of the phrase in 1885, without returning to the original text, by changing it to "productions of manufacturers," a much narrower meaning than the original.[56] It remained in that new form in legislative manuals and statute books, until the 1974 revision.

In the 115 years from 1858 to 1973, no fewer than 186 amendments to the constitution were formally proposed.[57] Many of them were adopted by the people.[58] Some amendments changed small details while others added entire articles.[59] Some articles, especially the article relating to the judiciary, were com-

51. *Id.* at 137-38. "At the time of its entry Minnesota was the third largest state in land area—only Texas and California were larger." Election Div., Sec'y of State, MINNESOTA LEGISLATIVE MANUAL 1993-1994, at 34-40 [hereinafter LEGISLATIVE MANUAL].

52. ANDERSON, *supra* note 39, at 110.

53. The common text was reproduced in the *Legislative Manuals* and in compilations of statutes.

54. The handwritten originals are reproduced at 1 MINN. STAT. ANN. 186 (Democrat document) and 226 (Republican document). (The provision was then contained in art. X, § 4).

55. MINNESOTA LEGISLATIVE MANUAL, 1885, 74.

56. MINNESOTA LEGISLATIVE MANUAL, 1887, 89.

57. For a list of these proposed amendments *see* LEGISLATIVE MANUAL, *supra* note 51, at 34-40.

58. *Id.*

59. Article XVI on highways was added in 1920 and revised in 1956; article 17 on forest fires was added in 1924; article XVIII on forestation in 1926; article XIX on aeronautics in 1944; article XX, creating a veterans bonus in 1948, and article XXI, dealing with taconite taxation in 1964.

pletely rewritten.[60] As a result, the constitution grew longer, more complex, repetitive, and difficult to understand.

The longest amendment was the highways amendment of 1920.[61] Representing a political compromise between motorists, who wanted to build new roads, and taxpayers, who did not want them financed by general revenues,[62] the amendment provided a scheme for financing highways with motor vehicle revenues.[63] The framers of this proposal were also concerned about the potential for favoritism in the selection of highway routes, so they wrote the routes of 70 major state highways into the text of the constitution.[64] Those routes remained part of the constitution until 1957, when an amendment relegated them to a lengthy footnote.[65] The Revisor banished them to a cross-reference in the 1969 text.[66]

A Constitutional Study Commission, headed by former Governor Elmer L. Andersen, was established in the early 1970s to study the constitution and propose amendments.[67] The commission proposed a number of changes to the constitution, covering a variety of issues.[68] Perhaps the most important of them was the Structure and Form Amendment, which proposed a simplification of the constitution and a reduction and modernization of its verbiage.[69] This amendment was prepared by Jack Davies, then a State Senator and a member of the commission. After review by the full commission and considerable work by the legislature, the proposal was approved by the voters in November of 1974.[70] The voters were asked:

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60. The judiciary article was completely revised in 1956. See Laws, 1955, c. 881. T. BLEGEN, MINNESOTA: A HISTORY OF THE STATE, 599-80 (1963).

61. ANDERSON, *supra* note 39, at 201. The goal of this amendment was to "get Minnesota out of the mud." *Id.* at 202 n.235.

62. The final article of the new constitution, article XIV, carries forward this treatment of the public highway system. MINN. CONST. art. XIV.

63. ANDERSON, *supra* note 39, at 40.

64. *Id.* at 252-63.

65. MINN. CONST. art. XVI, *reprinted in* 1 MINN. STAT., at 50 (1957).

66. *Compare* 1 MINN. STAT., at 49 (1969).

67. 1 MINN. STAT. ANN. 129 (1976).

68. The final report is published as *Minnesota Constitutional Study Commission, Final Report* (1973). For a discussion of the earlier Minnesota Constitution Commission of 1947-48 and the aftermath of its recommendations, see G. Theodore Mitau, *Constitutional Change by Amendment: Recommendations of the Minnesota Constitutional Commission in Ten Years' Perspective*, 44 MINN. L. REV. 461 (1959).

69. 1 MINN. STAT. ANN. 131-32 (1976).

70. 1974 MINN. LAWS ch. 409.

> Shall the Minnesota Constitution be amended in all its articles to improve its clarity by removing obsolete and inconsequential provisions, by improving its organization and by correcting grammar and style of language, but without making any consequential changes in its legal effect?[71]

The final phrase, *without making any consequential changes in its legal effect*, is significant. The phrase indicates that the current constitution is not written on a clean slate. Because the amendment did not intend to make any consequential changes, interpretations of the previous constitution have a continuing validity. When researching issues under the new language, reference should be made to the previous version and to the interpretations thereunder. This can sometimes be a frustrating endeavor, since provisions of the old constitution were frequently dispersed to several parts of the new one. A concordance that allows the tracing of provisions from one document to the other was published in the 1974 version of Minnesota Statutes.[72]

There have, of course, been additional amendments since 1974.[73] These provisions, however, have the luxury of standing alone. Because each of the post-1974 amendments has its own legislative history and a unique text, constitutional interpretation should be simpler.

With this historical backdrop in mind, the following section briefly explores the textual structure of the Minnesota Constitution.

B. A "Short Tour" of the Minnesota Constitution

A table of contents of the articles of the Minnesota Constitution is set forth in Appendix One. For the individual litigant, the most important provisions are to be found at the beginning and the end, specifically in article I and articles X through XIII. These confer substantive rights or liberties on citizens of the state and limit the power of government. The intervening articles primarily address the structure and organization of govern-

71. *Id.* § 3.

72. 4 MINN. STAT. 6329 (1974).

73. For example, in 1982 an amendment was adopted creating a Minnesota Court of Appeals. Again, in 1982, an amendment was adopted that permitted the legislature to authorize on-track parimutuel betting on horse racing. In 1988, an amendment was adopted that permitted the legislature to authorize a state-operated lottery. *See* LEGISLATIVE MANUAL, *supra* note 51, at 40.

ment. These intervening articles should not be overlooked because they may be important in examining the validity of governmental actions and are of vital significance for public officials.

The bill of rights is contained in article I of the Minnesota Constitution. The Minnesota version is much longer and more detailed than its federal counterpart. The importance of individual rights to the founders of the Minnesota Constitution is further demonstrated by the placement of the bill of rights at the beginning of the document—before any governmental institutions are established—rather than as a series of amendments at the end, as it appears in the Federal Constitution.

Many of the provisions of the Minnesota Constitution parallel the language of the federal document, but others raise significant new areas of protection. Article I was originally drafted in 1857,[74] a decade before the adoption of the federal Fourteenth Amendment.[75] As a result, article I replicates and expands upon many of the liberties expressed in the text of the original Federal Constitution and the first ten amendments. Omitted, however, is any express mention of equal protection. That doctrine was left to subsequent judicial development.[76]

Individual rights are scattered through the remainder of the instrument, especially in articles X through XIII. These articles deal with taxation,[77] appropriations and finance,[78] special legis-

74. MINN. CONST. art. I (amended 1974). The 1857 constitution is reprinted in the Minnesota Statutes Annotated and in editions of the Minnesota Statutes published before 1976.

75. The Fourteenth Amendment was ratified by the legislatures in 30 of 36 states as of July 21, 1868. U.S.C.A. CONST. art. XIV historical note, at 7.

76. *See* Iijima, *supra* note 13, at 337.

77. MINN. CONST. art. X. A Minnesota court, discussing this provision, has stated that the "uniformity clause of our state constitution is no more restrictive upon the legislature's power to tax or classify than is the Equal Protection Clause of the Fourteenth Amendment." *See* Contos v. Herbst, 278 N.W.2d 732, 736 n.2 (Minn. 1979), *appeal dismissed*, 444 U.S. 804 (1979).

78. MINN. CONST. art. XI. This article was interpreted by the Minnesota Supreme Court in Minnesota Hous. Fin. Agency v. Hatfield, 297 Minn. 155, 210 N.W.2d 298 (1973). In this case, the court held that assistance of the state housing finance agency in the financing of housing for persons of low and moderate incomes through the making of federally insured loans was for a "public purpose" and, therefore, was permissible under the constitutional provision that permitted levy and collection of taxes only for public purposes. *Id.* at 166-74, 210 N.W.2d at 305-08.

lation and local government, and miscellaneous other subjects.[79] While many of these provisions address the organization and distribution of governmental powers and responsibilities, others express significant individual protections. For example, taxes must be levied uniformly and for a public purpose.[80] Special assessments cannot exceed the value added by the improvement.[81] Two separate limitations on special legislation are contained in article XII. One of them requires the use of general laws, when possible.[82] The other absolutely prohibits special legislation in a long list of circumstances.[83] These provisions, requiring uniformity in specific situations or prohibiting disparate treatment in others, became part of the intellectual history that led to the development of an implied doctrine of equal protection based on the state constitution.[84]

Article XIII contains a long list of miscellaneous subjects. Most significant may be the requirement of "uniform" and "efficient" public education.[85] But one should not forget the significant protection for gardeners by the "vegetable clause,"[86] which may be unique to Minnesota! It provides: "Any person may sell or peddle the products of the farm or garden occupied and cultivated by him without obtaining a license therefor."[87]

The intervening provisions deal mostly with the structure of state government. After delimiting the boundaries of the state

79. MINN. CONST. art. XIII. Some of these "miscellaneous" other subjects include: uniform system of public schools, prohibition against aiding sectarian schools, lands taken for public use, veterans' bonuses, and militia organization. *Id.*

80. MINN. CONST. art XII. For example, a court held that special legislation that required all persons who are not members of the Minnesota Chippewa Tribe to pay a special licensing fee for the privilege of fishing within Leech Lake Reservation is not an unconstitutional denial of equal protection to non-Indians. *See* State v. Forge, 262 N.W.2d 341, 347-48 (Minn. 1977), *appeal dismissed*, 435 U.S. 919 (1978).

81. A Minnesota Attorney General's opinion discusses this matter, noting that "[s]pecial assessments must be based on special benefits to particular property involved, measured by the enhancement of property value resulting from the improvement." Op. Att'y Gen. 408-C (1955).

82. MINN. STAT. art. XII, § 1.

83. *Id.*

84. *See* Iijima, *supra* note 13, at 337; *see also* Schumann v. Commissioner of Taxation, 312 Minn. 477, 253 N.W.2d 130 (1977) (analyzing equal protection under the Minnesota Constitution). The *Schumann* court noted that the equal protection provision of the state constitution imposes no greater restrictions on legislative power to establish classifications than the Fourteenth Amendment of the Federal Constitution. *Id.* at 480-81, 253 N.W.2d at 132.

85. MINN. CONST. art. XIII, § 1.

86. *Id.* § 7.

87. *Id.*

in article II, the constitution continues in article III to require strict separation of powers unless otherwise expressly permitted.[88] This differs from the federal document which is predicated on a presumption of separation of powers but never expressly articulates a rule to that effect.[89] Articles IV, V, and VI deal with the legislative,[90] executive,[91] and judicial[92] branches respectively. Articles VII, VIII, and IX address voting rights,[93] impeachment of officers,[94] and constitutional amendments[95] and Article XVI provides for the collection and distribution of motor vehicle and fuel taxes.[96]

The Minnesota Constitution can be a fertile source of independent state analysis for resourceful attorneys and judges. In order for independent state analysis to flourish, however, legal professionals must become familiar not only with the Minnesota Constitution itself, but also must learn to craft their analyses and arguments on truly independent state grounds. This will aid in the development of a body of jurisprudence interpreting the fundamental law of the State of Minnesota. The following section highlights some of the most important considerations, and looks at how differences in language between the state and federal constitutions, in the context of individual rights, can furnish reasons to depart from federal precedent to consider questions on state grounds alone.

IV. Invoking State Constitutional Law

A. *Procedural Considerations*

Complying with procedural requirements is important. Lawyers seeking relief or defense under the Minnesota Constitution must allege state constitutional grounds separately in pleadings

88. *Id.* art. III, § 1.

89. *See* Springer v. Phillippine, 277 U.S. 189, 201 (1928) (noting that, while some state constitutions expressly provide for separation of powers and others, like the Federal Constitution do not, the principle is "implicit in all").

90. Minn. Const. art. IV.

91. *Id.* art. V.

92. *Id.* art. VI.

93. *Id.* art. VII.

94. *Id.* art. VIII.

95. Minn. Const. art. IX.

96. Minn. Const. art XVI, § 3. *See supra* notes 59-64 and accompanying text for the history of this article.

and argument.[97] Judges should separately identify all state constitutional grounds when rendering decisions.[98] If the state issue presents an "adequate and independent state ground" that supports a state court decision, the effect will be to cut off all avenues of appeal to the United States Supreme Court.[99]

An example is perhaps better than an explanation. Assume that a defendant in a criminal case argues that his or her rights were violated by an unconstitutional search and seizure. If that defendant bases the claim solely on federal constitutional rights and prevails in the state system, the state may seek certiorari in the United States Supreme Court and possibly obtain reversal of the decision. If, however, the defendant bases the claim on both federal and state constitutional violations and prevails in the state supreme court on state grounds, the case is not subject to further review in the United States Supreme Court. In the latter instance, the evidence must be suppressed without regard to whether there would be a different outcome under federal constitutional analysis.

A state supreme court can be more protective of individual rights than the United States Supreme Court without raising the possibility of further review.[100] It may not, however, be less protective of individual rights.[101] To deviate from the federal standard, however, the state court must explicitly rely on a state ground and treat that as an independent basis.[102] This approach, however, has not always been followed.[103]

Many older state decisions treated federal and state constitutional doctrines interchangeably, using precedents from federal

97. *See* Sheridan & Delapena, *supra* note 4, at 683. Sheridan and Delapena offer practical advice to attorneys bringing state constitutional claims and include sample briefs for two particular state constitutional claims that might be raised and argued in Minnesota. *Id.* at 723-42. *See also* John Henry Hingson III, *State Constitutions & the Criminal Defense Lawyer: A Necessary Virtue*, THE CHAMPION December 1990, at 6-7 (describing "how to 'do' state constitutional law").

98. *See* Sheridan & Delapena, *supra* note 4, at 691-708.

99. *Id.* at 694-95, 700.

100. *Id.* at 690, 715-16.

101. *Id.* at 688.

102. *Id.* at 698-701.

103. *See* Hans A. Linde, *Are State Constitutions Common Law?*, 34 ARIZ. L. REV. 215 (1992). Judge Linde, Senior Judge of the Oregon Supreme Court, discusses some of the problems created when federal questions are considered before state constitutional claims. *Id.* at 216-19. He goes on to consider whether states are "overusing" their state constitutions to the point of treating constitutional law as common law. *Id.* at 225-28.

cases to interpret state language.[104] Modern state supreme courts that follow this path do so at their peril. As federal protections are being constricted by the United States Supreme Court, state courts willing to rely on federal precedent run the risk that the Court will likewise constrict the state protections.[105] To avoid this consequence, explicit reliance on state grounds in the state decision is essential.[106]

B. Textual Differences as Grounds for Independent Analysis of Individual Rights

As indicated in Section III.B, individual claimants will find the most immediately applicable rights enumerated in the state bill of rights, article I of the Minnesota Constitution. Other rights, however, are scattered throughout the document, particularly in articles X through XIII. Appendix Two sets forth federal and state rights in parallel form. Appendix Three provides additional references to some of the rights expressly secured solely by the state constitution.

Differences in language between rights protected in the federal and state constitutions might be, or may become, very important. At one time, the Minnesota Supreme Court tended to gloss over any difference in the language of passages in the Minnesota Constitution and similar federal provisions in an attempt

104. *See, e.g.*, National Tea Co. v. State, 205 Minn. 443, 447, 286 N.W. 360, 362 (1939) (construing both U.S. CONST. amend. XIV, § 1 and MINN. CONST. art. IX, § 1 as imposing "identical restrictions upon the legislative power of the state in respect to classification for purposes of taxation" and citing Louisville Gas Co. v. Coleman, 277 U.S. 32, 37 (1928) as illustrative of the principle that "all similarly situated shall be treated alike"); State v. Pehrson, 205 Minn. 573, 577, 287 N.W. 313, 316 (1939) (citing Bosley v. McLaughlin, 236 U.S. 385 (1915) in construing art. I, § 2 and art. IV, § 33 of the Minnesota Constitution); State *ex rel.* Burnquist v. District Court, 141 Minn. 1, 17, 168 N.W. 634, 637 (1918) (citing Mississippi v. Johnson, 71 U.S. 475 (1866) in construing the provision of the Minnesota Constitution that imposes a duty on the Governor to "take care that the laws be faithfully executed").

105. *See* Michigan v. Long, 463 U.S. 1032, 1040-41 (1983) (holding that state court decisions that are interwoven with or "appear" to rest primarily on federal law are reviewed as though based on federal grounds).

106. *See* Hingson, *supra* note 95, at 10 (setting out "plain statement boilerplate"). This symposium issue contains various examples of independent analysis under the Minnesota Constitution that illustrate this point. *See, e.g.*, Cynthia R. Bartell, *Giving Sobriety Checkpoints the Cold Shoulder in Minnesota: A Proposed Balancing Test for Suspicionless Seizures Under the Minnesota Constitution*, 20 WM. MITCHELL L. REV. 515 (1994); Iijima *supra* note 13, at 337; Olson, *supra* note 31, at 439; Steenson, *supra* note 31, at 383; Kathleen Smith Ruhland, *Equal Opportunity Education for Minnesota's School Children: A Missed Opportunity by the Court*, 20 WM. MITCHELL L. REV. 559 (1994).

to create a uniform interpretation for the federal and state constitutions.[107] Thus, it was once said that the uniformity provisions of the taxation article meant the same thing as the federal equal protection provision of the Fourteenth Amendment.[108] This approach is no longer followed. As Justice Wahl has recently stated:

> To harness interpretation of our state constitutional guarantees of equal protection to federal standards and shift the meaning of Minnesota's constitution every time federal case law changes would undermine the integrity and independence of our state constitution and degrade the special role of this court, as the highest court of a sovereign state, to respond to the needs of Minnesota citizens.[109]

The following section illustrates how minor differences in language might be extremely significant.

Note the single word of difference in the following texts:

Federal: Excessive bail shall not be required, nor excessive fines imposed, nor cruel *and* unusual punishments inflicted.[110]

State: Excessive bail shall not be required, nor excessive fines imposed, nor cruel *or* unusual punishments inflicted.[111]

The United States Supreme Court has held that capital punishment is not a violation of the federal standard quoted above.[112] If the Minnesota legislature were to seek to reintroduce capital punishment here, the single word of difference could render federal precedent irrelevant. Indeed, use of the word "or" rather than "and" could lend weight to an argument that the absence of capital punishment in this state for nearly a century made the death penalty "unusual" here without regard to other analysis.

Examples of this kind of difference abound. Another is found in the more expansive language of the Minnesota Constitution's

107. *See, e.g.*, State v. Target Stores, Inc., 279 Minn. 447, 451 n.18, 156 N.W.2d 908, 912 (1968) (noting that the Minnesota Supreme Court considers the federal and Minnesota constitutional guarantees of due process and free exercise of religion to be the same).

108. *See, e.g.*, Wegan v. Village of Lexington, 309 N.W.2d 273, 280 (Minn. 1981).

109. *Russell*, 477 N.W.2d at 889 (citing *In Re* Estate of Turner, 391 N.W.2d 767, 773 (Minn. 1986) (Wahl, J., concurring specially)).

110. U.S. CONST. amend. VIII (emphasis added).

111. MINN. CONST. art. I, § 5 (emphasis added).

112. *See* Stanford v. Kentucky, 492 U.S. 361 (1989).

"taking" clause,[113] which speaks of property being "taken, destroyed or damaged," rather than the narrower language of the Fifth Amendment, which speaks only of property "taken."[114] Could this difference be a basis for an expanded application of the taking doctrine in Minnesota?[115]

Another example of state court action is found in the protection provided by the Minnesota Constitution for freedom of religion.[116] Federal protection of the free exercise of religion is found only in part of a single sentence in the First Amendment.[117] In contrast, the Minnesota protection extends, in great detail, over two lengthy sections,[118] with an additional, separate section that also addresses the establishment of religion.[119]

This brief introduction to the Minnesota Constitution is not intended as an exhaustive analysis of the textual differences in detail. Nevertheless, the few situations addressed here serve as a reminder that careful attention must be given to differences in wording between the state and federal texts. When wording is different, even if only slightly, the potential for different interpretation in the state court is always present.

Express protections and textual variations are not the exclusive sources of broader state protection. In searching for individual rights, one must look beyond the state bill of rights. Some rights are spelled out elsewhere in the state constitution. Other rights are part of a broader "unwritten constitution," which the Minnesota courts have recognized for more than half a cen-

113. MINN. CONST. art. I, § 13.

114. U.S. CONST. amend V. "No person shall . . . be deprived of . . . property, without due process of law; nor shall private property be taken for public use without just compensation." *Id.*; *see also* Wegner v. Milwaukee Mut. Ins. Co., 479 N.W.2d 38, 41-42 (Minn. 1991) (holding that damage to private property by city police constitutes a taking within the meaning of the Minnesota Constitution); *compare* Harris v. United States, 205 F.2d 765, 768 (10th Cir. 1953) (holding that a single act of the government that damages or destroys private property is not a taking in a constitutional sense but, rather, is a tortious act for which the government is only consensually liable).

115. *See* Olson, *supra* note 31, at 433.

116. *See, e.g., Hershberger II*, 462 N.W.2d 393 (Minn. 1990); *see also supra* notes 15-24 and accompanying text.

117. U.S. CONST. amend I. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . . ." *Id.*

118. MINN. CONST. art. I, §§ 16-17.

119. MINN. CONST. art. XIII, § 2.

tury.[120] To appreciate all of the rights available, one should read all of the constitution.

"Buried" provisions in the Minnesota Constitution that promise direct and immediate application for individuals include:

> —The "uniformity" clause regarding public education, which is found in article XIII, section 1.[121] This was recently the subject of substantial litigation in the state Supreme Court.[122]
>
> —The "uniformity" clause regarding taxation, which is found in article X, section 1.[123] Although written to allow the legislature broad discretion in classification for tax purposes, this provision provides some limit on the drafting of tax legislation.
>
> —Two "general laws" clauses, which may restrict the authority of the legislature to enact special legislation in certain cases. The first two sentences of article XII, section 1, provide a general rule under which a special law may be enacted only if a general law could not be made applicable.[124] The third sentence, however, provides a long list of circumstances in which a special law cannot be passed at all.[125]

The Minnesota Supreme Court has also recognized other constitutional principles for which there is no direct text in the document. Most notable of these is a constitutional principle of equality.[126] While the state constitution has always contained rules requiring uniformity of taxation and of education, it contains no general equal protection clause.[127] Nevertheless, the Minnesota Supreme Court, in the 1920s and 1930s adopted a

120. The Minnesota Constitution provides that "[t]he enumeration of rights in this constitution shall not deny or impair others retained by and inherent in the people." MINN. CONST. art. I, § 16. Among these unenumerated rights are: equal protection, stated in State v. Russell, 477 N.W.2d 886 (Minn. 1991); the right to privacy, defined in *In re* Conservatorship of Torres, 357 N.W.2d 332 (Minn. 1984); and property and family rights, found in Thiede v. Town of Scandia Valley, 217 Minn. 218, 14 N.W.2d 400 (1944).

121. MINN. CONST. art. XIII, § 1.

122. For a detailed analysis of the education clause of the Minnesota Constitution, see Ruhland, *supra* note 104, at 559.

123. MINN. CONST. art. X, § 1.

124. MINN. CONST. art. XII, § 1.

125. *Id.*

126. *See, e.g.*, Iijima, *supra* note 13, at 337; Ruhland, *supra* note 104, at 559.

127. The original constitution of 1857 was written before adoption of the federal Equal Protection Clause, which was ratified as the Fourteenth Amendment in 1868. *See* U.S.C.A. amend. XIV, § 1 historical notes (1987). The Minnesota Constitution revision of 1974 merely sought to restate the 1857 constitution, so it did not add an express equal protection provision.

broad-ranging principle of equal protection, which it has not been reluctant to apply. Equal protection under the Minnesota Constitution is based upon principles in the text, but clearly reaches beyond the exact language of its command.[128] A right to privacy may similarly be drawn from state constitutional provisions.[129]

Whether the source be express state constitutional provisions, differences in the language of state provisions compared with their federal counterparts, or buried provisions subject to civil libertarian inferences, the Minnesota Constitution is a rich source of independent state analysis for the resourceful practitioner.

V. Conclusion

State constitutional law has become increasingly important in a way perhaps unparalleled since the beginning of this century. This may be in response to dissatisfaction with vacillating federal standards, or with recent limitations by the United States Supreme Court on individual rights. As a consequence, states like Minnesota with progressive traditions of protecting individual rights are turning to their state constitutions to analyze constitutional issues.

Minnesota's three constitutions vary in significant respects from the United States Constitution and have their own unique history. In order to take advantage of this source of constitutional analysis, practitioners and courts must carefully distinguish between federal and state grounds. Whenever constitutional issues are presented (and even in some cases in which they do not arise) practitioners must remember to separately examine the state limitations, separately plead them, and separately argue them. In this way, Minnesota will more effectively meet the challenge of safeguarding the individual liberties of its citizens within the shrinking universe of federal protections.

128. *See* Iijima, *supra* note 13.
129. *See* Steenson, *supra* note 31.

APPENDIX ONE

THE MINNESOTA CONSTITUTION
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APPENDIX THREE

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